

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEVEN BOUTTE, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
BELL ATLANTIC CORPORATION, et al.	:	NO. 99-2378

ORDER - MEMORANDUM

AND NOW, this 25th day of August, 1999, plaintiffs' motion "to disqualify Vincent H. Cohen, Harry T. Jones, Jr., Karen M. Hardwick, and Lily M. Garcia in the representation of Nick Pomponio and Tom Flaherty" is denied. Jurisdiction is federal question. 28 U.S.C. § 1331.

According to the complaint, beginning in 1994, two white managers in a Bell Atlantic garage, Flaherty and Pomponio, created a hostile work environment for black employees. Ten plaintiffs seek compensatory and punitive damages and injunctive relief against Bell Atlantic Corporation, its Pennsylvania subsidiary, and the two garage managers.

Standards for professional conduct in this District are governed by the Pennsylvania Rules of Professional Conduct. See Local Civil Rule 83.6(IV)(B). Under Rule 1.7(b):

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and

- (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken. The consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

The Comment further explains:

A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. . . . An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question.

Plaintiffs assert that Rule 1.7(b) is implicated by the chance that Flaherty and Pomponio will concede to racial motivation or that Bell Atlantic will point to corrective action against them as a means of mitigating its liability. Defendants maintain that neither conflict will arise, as their litigation position is unified. Defendants' filings to date bear this out. For example, Flaherty and Pomponio's answers deny any racial motivation to their managerial decisions. Flaherty answer ¶ 17; Pomponio answer ¶ 17.

Although the scenarios advanced by plaintiff could conceivably be grounds for disqualification, a present conflict does not exist and a future conflict appears unlikely. As the comment to Rule 1.7 points out, "resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the

representation.” There is no indication that defense counsel has abdicated this duty such that court intervention is necessary.

Edmund V. Ludwig, J.